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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,	)	No. CR 11-00399 LHK
	)	
12 Plaintiff,	)	STIPULATION AND <del>PROPOSED</del>
	)	ORDER CONTINUING HEARING DATE
13 vs.	)	AND EXCLUDING TIME UNDER THE
	)	SPEEDY TRIAL ACT
14 BENJAMIN MACIAS-DONATO,	)	
	)	
15 Defendant.	)	
	)	

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17 **STIPULATION**

18 Defendant Benjamin Macias-Donato, by and through Assistant Federal Public Defender  
19 Varell L. Fuller, and the United States, by and through Special Assistant United States Attorney  
20 Carolyn Sanin, hereby stipulate that, with the Court's approval, the status hearing currently set  
21 for Wednesday, February 8, 2012, at 10:00 a.m., shall be continued to Wednesday, February 29,  
22 2012, at 10:00 a.m.

23 The reason for the requested continuance is the defense has requested, and is still waiting  
24 to receive, the defendant's elementary, middle school, and other educational records, which are  
25 relevant to the issue of Mr. Macias-Donato's cultural assimilation and therefore the terms of the  
26 proposed disposition in this matter. The parties have been diligently working to resolve this

matter, however defense counsel has experienced difficulty in obtaining the aforementioned educational records despite the exercise of due diligence. Accordingly, defense counsel respectfully request additional time to conclude the on-going investigation with respect to this issue. The parties therefore respectfully request a continuance to February 29, 2012.

The parties agree that the time between February 8, 2012, and February 29, 2012, may be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A) and (B)(iv), for effective preparation by defense counsel.

Dated: February 6, 2012

\_\_\_\_\_/s/\_\_\_\_\_  
VARELL L. FULLER  
Assistant Federal Public Defender

Dated: February 6, 2012

\_\_\_\_\_/s/\_\_\_\_\_  
CAROLYNE SANIN  
Special Assistant United States Attorney

**~~PROPOSED~~ ORDER**

GOOD CAUSE APPEARING, upon stipulation of the parties, IT IS HEREBY ORDERED that the hearing currently set for Wednesday, February 9, 2012, shall be continued to Wednesday, February 29, 2012, at 10:00 a.m.

THE COURT FINDS that failing to exclude the time between February 9, 2012, and February 29, 2012, would unreasonably deny both counsel for the government and the defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence. *See* 18 U.S.C. §§ 3161(h)(7)(B)(iv).

THE COURT FINDS that the ends of justice served by excluding the time between February 9, 2012, and February 29, 2012, from computation under the Speedy Trial Act outweigh the interests of the public and the defendant in a speedy trial.

THEREFORE, IT IS HEREBY ORDERED that the time between February 9, 2012, and

1 February 29, 2012, shall be excluded from computation under the Speedy Trial Act, 18 U.S.C. §  
2 3161(h)(7)(A) and (B)(iv).

3 IT IS SO ORDERED.

4 Dated: 2/7/12

  
THE HONORABLE LUCY H. KOH  
United States District Judge